

(3) The party has filed a request for an ALJ hearing in accordance with § 405.855, or DAB review in accordance with 20 CFR 404.968.

(4) The amount remaining in controversy is \$1,000 or more.

(5) If there is more than one party to the hearing decision, each party concurs, in writing, with the request for an EAP.

(b) *Content of the request for EAP.* The request for an EAP:

(1) Alleges that there are no material issues of fact in dispute; and

(2) Asserts that the only factor precluding a decision favorable to the party is a statutory provision that is unconstitutional or a regulation, national coverage decision under section 1862(a)(1) of the Act, or CMS Ruling that is invalid.

[62 FR 25854, May 12, 1997]

§ 405.855 ALJ hearing.

(a) *Right to hearing.* A party to the carrier hearing has a right to a hearing before an ALJ if—

(1) The party files a written request for an ALJ hearing within 60 days after receipt of the notice of the carrier hearing decision; and

(2) The amount remaining in controversy is \$500 or more.

(b) *Place of filing hearing request.* The request for an ALJ hearing must be made in writing and filed with the carrier that issued the decision, a Social Security office, or, in the case of a qualified railroad retirement beneficiary, an office of the Railroad Retirement Board.

(c) *Effect of ALJ hearing decision.* (1) An ALJ's decision is binding on all parties to the hearing unless—

(i) The DAB reviews the ALJ decision;

(ii) The DAB does not review the ALJ decision, and the party requests judicial review;

(iii) The decision is revised by the DAB or an ALJ in accordance with the provisions of § 405.750 of this chapter; or

(iv) The expedited appeals process is used.

[62 FR 25854, May 12, 1997]

§ 405.856 Departmental Appeals Board (DAB) review.

Regulations beginning at 20 CFR 404.967 regarding SSA Appeals Council Review are applicable to DAB review of matters addressed by this subpart.

[62 FR 25854, May 12, 1997]

§ 405.857 Court review.

(a) *General rule.* To the extent authorized by sections 1869, 1876(c)(5)(B), and 1879(d) of the Act, a party to a DAB decision, or an ALJ decision if the DAB does not review the ALJ's decision, may obtain a court review if the amount remaining in controversy is \$1,000 or more. A party may obtain court review by filing a civil action in a district court of the United States in accordance with the provisions of section 205(g) of the Act. The filing procedure is set forth in 20 CFR 422.210.

(b) *Prohibition against court review of certain Part B regulations or instructions.* Under section 1869(b)(4) of the Act, a court may not review a regulation or instruction that relates to a method of payment under Part B if the regulation was promulgated, or the instruction issued, before January 1, 1981.

[62 FR 25854, May 12, 1997]

§ 405.860 Review of a national coverage determination (NCD).

(a) *General rule.* (1) An NCD is a determination by the Secretary for whether or not a particular item or service is covered nationally under title XVIII of the Act.

(2) An NCD does not include a determination of what code, if any, is assigned to a particular item or service covered under title XVIII or a determination for the amount of payment made for a particular item or service.

(3) NCDs are made under section 1862(a)(1) of the Act or other applicable provisions of the Act.

(4) An NCD is binding on all Medicare carriers, fiscal intermediaries, QIOs, HMOs, CMPs, HCPPs, the Medicare Appeals Council, and ALJs.

(b) *Review by ALJ.* (1) An ALJ may not disregard, set aside, or otherwise review an NCD.

(2) An ALJ may review the facts of a particular case to determine whether an NCD applies to a specific claim for